

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of Station)	
WTVE(TV), Channel 51,)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	
CORPORATION)	File No. BPCT-940630KG
)	
For Construction Permit for a)	
New Television Station On)	
Channel 51, Reading,)	
Pennsylvania)	

RECEIVED**OCT 2 2000**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Administrative Law Judge Richard L. Sippel

**PROPOSED FINDINGS OF FACT
 AND CONCLUSIONS OF LAW OF
 READING BROADCASTING, INC.**

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October 2, 2000

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SUMMARY

This is a comparative license renewal case between Reading Broadcasting, Inc. ("Reading"), the incumbent licensee of WTVE(TV), Reading, Pennsylvania, and Adams Communications Corporation ("Adams"), the challenger. Reading is fully qualified to remain a Commission licensee. The challenger, Adams, is not qualified to be a licensee because its application is an abuse of the Commission's processes. Even if Adams were deemed to be qualified, Reading is the superior applicant under the Commission's comparative criteria.

A. Comparative Issue

Reading's operation of WTVE(TV), Reading, Pennsylvania during the 1989-94 license term constituted substantial performance, which merits a dispositive renewal expectancy. Even if that were not the case, Reading's comparative credits for local residence, civic activities, past broadcast experience and comparative coverage would be dispositive.

B. Misrepresentation/Lack of Candor Issue

The record reflects a complete absence of deceptive intent by Mr. Parker which might support a misrepresentation / lack of candor finding against him. In particular, the representations at issue are fully responsive, provide all the information requested by the application forms, and are consistent with all the Commission's requirements that can be clearly identified to an ascertainable certainty. Moreover, the representations were

made in reasonable, good faith reliance upon the advice of counsel, which, consistent with the Commission's past practice, policy, and precedent, precludes a misrepresentation / lack of candor finding.

C. Abuse of Process Issue

In WWOR-TV, Inc., 7 FCC Rcd 636, ¶ 25 (1992), aff'd sub nom. Garden State Broadcasting, L.P. v. FCC, 996 F.2d 386 (D.C. Cir. 1993), the Commission found two factors to be "especially probative" as indications that the challenger had not filed with the intention of acquiring, owning, and operating the television station at issue: first, the Commission found that the challenging applicant's stated reason for filing its application "was at best without credibility and at worst false and misleading;" and, second, the remaining evidence of the challenging applicant's purpose did not demonstrate a primary interest in owning the television station. Garden State Broadcasting, L.P. v. FCC, 996 F.2d at 391; see WWOR-TV, Inc., 7 FCC Rcd 636, ¶ 25. "As additional evidence of intent, the FCC relied on the fact that [the principals of the challenging applicant] formed [the challenging applicant] almost immediately after they received large payments from [a prior comparative renewal challenge] settlement." Id. at 391; see WWOR-TV, Inc., 7 FCC Rcd 636, ¶ 25.

As in Garden State, Adams' stated reason for filing its application here is, at best, without credibility and, at worst, false and misleading. Likewise, the remaining evidence of Adams' intent does not demonstrate a primary interest in owning Channel 51 in Reading, Pennsylvania. Finally, as in

Garden State, Adams was formed for the purpose of filing a comparative renewal challenge almost immediately after its principals received large payments in settlement of their prior comparative renewal challenge of Video 44. Accordingly, as in Garden State, the challenger's -- Adams' -- comparative renewal application must be denied as an abuse of process.

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To: Administrative Law Judge Richard L. Sippel

**PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW OF
READING BROADCASTING, INC.**

I. Introduction

1. In this proceeding, Reading Broadcasting, Inc. ("Reading") seeks renewal of its license to operate station WTVE, Channel 51, in Reading, Pennsylvania. Adams Communications Corporation ("Adams") has filed a mutually exclusive application for a construction permit for a new facility on Channel 51.

2. The proceeding was designated for hearing on May 6, 1999 on the following issues:

(1) To determine which of the proposals would, on a comparative basis, better serve the public interest; and

(2) To determine, in light of the evidence adduced pursuant to the foregoing issue, which, if either, of the applications should be granted.

Hearing Designation Order, DA 99-865 (Vid. Ser. Div., released May 6, 1999) ("HDO"). The comparative issue designated in the HDO is sometimes referred to as the "Phase I issue."

3. By Memorandum Opinion and Order released on October 15, 1999, the following issue was designated as to Reading's qualifications:

To determine whether Micheal L. Parker engaged in a pattern of misrepresentation and/or lack of candor in failing to advise the Commission of the actual nature and scope of his previously adjudicated misconduct and, if so, the effect of such misrepresentation and/or lack of candor on Reading's qualifications to remain a licensee.

Memorandum Opinion and Order, FCC 99M-61 (released October 15, 1999).

This issue is sometimes referred to in this proceeding as the "Phase II issue."

4. By Memorandum Opinion and Order released on January 20, 2000, the following issues were designated as to Adams' qualifications:

To determine whether Adams Communications Corporation has abused the Commission's comparative renewal processes by

the filing of a broadcast application for speculative and/or other improper purposes.

To determine whether such allegations of an abuse of process, if true, disqualify Adams Communications Corporation from receiving a Commission license.

Memorandum Opinion and Order, FCC 00M-07 (released January 20, 2000).

Those issues were subsequently restated as follows:

- A. To determine whether the principals of Adams Communications Corporation ("Adams") filed, or caused to be filed, an application for construction permit in the hope or expectation of achieving through litigation and settlement, a "precedent" or other recognition that the home shopping television broadcasting format does not serve the public interest.
- B. To determine in light of findings and conclusions as to issue A above, whether the principals of Adams Communications Corporation had, and continue to have, from June 30, 1994, to the present, a bona fide intention to construct and operate a television broadcasting station at Reading, Pennsylvania.
- C. To determine in light of findings and conclusions as to issues A and B above, whether Adams Communications Corporation has engaged and/or is engaging in an abuse of process, i.e., an abuse of the Commission's comparative renewal litigation and settlement process.
- D. If issues A and/or B and/or C are true, to determine whether Adams Communications Corporation is qualified to receive a Commission license, even if Adams would be willing to accept a settlement payment that

is limited to legitimate and prudent expenses
in return for dismissing its application.

Memorandum Opinion and Order, FCC 00M-19 (released March 6, 2000),
modifying Memorandum Opinion and Order, FCC 00M-07 (released January
20, 2000). These issues, collectively, are sometimes referred to as the "Phase
III issue."

5. Hearing sessions on the Phase I issue were held on January 6,
2000. Hearing sessions on the Phase II issue and the Phase III issue were
held on June 12-13, 2000 and July 25, 2000.

II. Proposed Findings of Fact

6. The first section below will present the findings relating to
Reading's claim to a renewal expectancy and to other comparative factors.
Findings related to the Phase II issue and the Phase III issue will be
presented in the following sections.

A. The Comparative Issue – Phase I

1. Comparative Coverage

7. WTVE operates on Channel 51 with an effective radiated power
of 1450 kilowatts from an antenna height above average terrain of 229
meters. The predicted Grade B (64 dBu) contour of WTVE's signal

encompass a land area of 14,128 square kilometers with a population of 3,119,889 persons. [Joint Engineering Statement (Reading Ex. 48 at 2-3)] WTVE has been issued a construction permit to move its site, increase its effective radiated power to 5,000 kilowatts and increase its antenna height above average terrain to 229 meters. Operation with that construction permit will increase WTVE's predicted Grade B coverage area to 21,602 square kilometers with 7,362,938 people. [Id.]

8. The Adams construction permit application proposes operation on Channel 51 with an effective radiated power of 5000 kilowatts and an antenna height above average terrain of 153 meters. The predicted Grade B contour of Adams' proposed signal would encompass a land area of 14,942 square kilometers with a population of 4,260,920 persons. [Id.]

9. There are at least six other authorized over-the-air TV services presently available within the predicted Grade B contours of WTVE's existing and proposed operations. [Id. at 4-5] Likewise, there are at least six other authorized over-the-air TV services presently available within the predicted Grade B contour of Adams' proposed operation. [Id.]

2. Diversification of Media Outlets

10. Reading is licensee of commercial television station WTVE, Reading, Pennsylvania, and certain auxiliary transmission services pursuant to Part 74 of the FCC's rules and business radio licenses which relate to

operation of that station. Reading also holds a construction permit to relocate WTVE's tower and transmitter facility, and is an applicant for a digital television construction permit. [Diversification of Media Outlets (Reading Ex. 4 at 1)]

11. Additionally, Reading possesses an authorization to operate a paging and radiotelephone service on a sub-carrier of its television channel (File No. 21733-CD-P/L-97). [Id.]

12. None of the officers, directors or shareholders of Reading has any interest in any broadcast or radio common carrier licenses or applications, or in any newspapers, magazines, other periodicals, cable television systems or other media of mass communications, except for Micheal L. Parker.¹ [Id.]

13. Mr. Parker has the following interests in broadcast licenses:

(a) Mr. Parker owns 39.33% of the issued and outstanding shares of Reading. Additionally, Mr. Parker votes an additional 8.93% of the shares of Reading pursuant to irrevocable proxy. Mr. Parker is president, chief executive officer, and one of five directors of Reading.²

(b) Mr. Parker is president, sole director and sole shareholder of Two If By Sea Broadcasting Corporation, a Delaware corporation ("TIBS"). TIBS is licensee of International Broadcast Station

¹ This excludes any non-attributable interests of any officers, directors or stockholders of Reading in publicly-traded companies such as AT&T.

² The ownership figures for Mr. Parker are as of the Phase I hearing date. As of Reading's annual ownership report for the current year, filed on April 4, 2000, his direct ownership percentage had been reduced to 36.53%. [Reading Ex. 42]

KAIJ, Dallas, Texas, and is the proposed assignee of the licenses and assets of commercial television station WHCT, Hartford, Connecticut, from Martin W. Hoffman, Esq., trustee in bankruptcy (File No. BALCT-930922KE). On April 9, 1993, TIBS was granted a construction permit for a new FM translator station to operate on Channel 221, Upland, California (File No. BPFT-920603KG). TIBS is programming WHCT for the Trustee in Bankruptcy pursuant to a local marketing agreement. TIBS has been programming WHCT pursuant to such an agreement since February 8, 1997.

(c) Mr. Parker is president, sole director and sole shareholder of Desert 31 Television, Inc., licensee of commercial television station KVMD, Twentynine Palms, California.

[Id. at 1-2]

14. Adams and its principals hold no cognizable interest in any media outlets.

3. Local Residence and Civic Activities

15. Reading is owned primarily by shareholders who presently reside and/or have resided within the city limits of Reading, Pennsylvania or within the predicted Grade B service contour of WTVE. Those stockholders residing within the city limits of Reading, Pennsylvania at least since 1992 are the following:³

³ All percentages of ownership are based on Reading's annual ownership report for the current year (Reading Ex. 42, pp. 12-37). Figures are rounded to the nearest full percentage point, except for stockholders with half a percent or less.

Irvin Cohen (10% stockholder)
Reading, Pennsylvania
(Resident since 1925)

Edward C. and Noni J. Fischer (1% stockholder)
Reading, Pennsylvania

Frank D. McCracken (1% stockholder)
Reading, Pennsylvania
(Resident since 1989 and many years
prior to 1989)

[Local Residence and Civic Activities (Reading Ex. 2 at 1)]

16. The communities of Wyomissing, West Lawn, and West Reading are contiguous to the City of Reading. The communities of Sinking Spring and Shillington are very close to the Reading city limits. All are considered to be suburbs of Reading. The following stockholders have resided and presently reside within the predicted Grade B contour of WTVE, but not within the city of license, at least since 1992, except as noted below:

Albert R. Boscov (0.5%)
Mt. Penn, Pennsylvania

Ben F. Bowers (1%)
Royersford, Pennsylvania

John R. and Jill L. Bower (1%)
Wyomissing, Pennsylvania

Harry Brueckman (0.1%)
Jenkintown, Pennsylvania

Faye H. Clymer, Trustee (4%)
Robert H. Clymer E.R. Trust
Wyomissing, Pennsylvania
(The Clymers have resided in Wyomissing

for many years, but now spend about
6 months of the year in Wyomissing
and about 6 months in Florida)

Robert A. Denby (2%)
West Lawn, Pennsylvania

Dolores Gallen (0.05%)
West Lawn, Pennsylvania

John H. Gallen (0.1%)
West Lawn, Pennsylvania

Bernard Gerber (0.5%)
Wyomissing, Pennsylvania

David Hyman (0.2%)
Narberth, Pennsylvania

Carol Anne Kasko-MacCallum (0.2%)
Shillington, Pennsylvania
(Resident of Grade B service area 1985-present)

Jack A. Linton (8%)
Mt. Penn, Pennsylvania

John Linton (0.01%)
Wyomissing, Pennsylvania

Nelson H. and Patricia Long (2%)
Wyomissing, Pennsylvania

Roger N. and L. Carole Longenecker (3%)
Leesport, Pennsylvania

Barbara MacCallum (0.1%)
Wyomissing, PA
(Resident since 1960; Reading resident, 1936-60)

David E. & Barbara W. Mann, Sr. (1%)
West Lawn, Pennsylvania
(Resident since 1968)

Catherine Z. Morrow (0.5%)
Shillington, Pennsylvania

Richard M. Palmer, Jr. (0.1%)
West Lawn, Pennsylvania

Micheal L. Parker (45.46%)
Wyomissing, Mount Penn, Pennsylvania
(Part-time resident of Mount Penn,
Pennsylvania, and Wyomissing, Pennsylvania,
from about
1989 through December 1996)

Sergio V. & Penelope P. Proserpi (1%)
Shillington, Pennsylvania

Uriel and Kelly Rendon (1%)
Cheltenham, Pennsylvania

Jose Rivera (0.1%)
Warminster, Pennsylvania
(Resident since 1982)

Leah Beth Rotenberg (0.2%)
Wyomissing, Pennsylvania

Jonathan Peter Rotenberg (0.2%)
Wyomissing, Pennsylvania

Adolpho E. Rodriguez (0.1%)
West Reading, Pennsylvania

Larry A. and Alison A. Rotenberg (0.03%)
Wyomissing, Pennsylvania

David A. Rotenberg (0.2%)
Wyomissing, Pennsylvania

Donald E. and Mary Lu Stoudt, TEI(0.1%)
West Lawn, Pennsylvania

Ralph Tietbohl (1%)
Sinking Spring, Pennsylvania

Joanne D. van Roden (0.3%)
Wyomissing, Pennsylvania

Patricia J. Verbinski (1%)
Wyomissing, Pennsylvania

[Id. at 1-4]

17. The following shareholders of Reading have participated in the following civic activities (dates are best estimates) in Reading or elsewhere within the WTVE Grade B contour:

Jack Linton

Treasurer, Berks County Bar Association, 1970-72
Chairperson, Tax Section, Berks County Bar Association, 1994-95
Member, Tax Committee, Eastern PA Delegation, White House Conference on Small Business, 1995
President, Berks County Mental Health Association, 1968-70
President, Reading Jewish Community Center, Circa 1982
Coach, Shillington Soccer Club, Berks County Youth Soccer League
Treasurer, Reading Soccer, 1982-84
President & Co-Founder, Estate Planning Council of Berks County, Circa 1972
Member, Berks County Mental Health Retardation Board, 1980's (6 yrs.)
President & Director, Berks County Chamber of Commerce, 1970's (2 yrs.)
Delegate, Congressional Summit on Small Business, 1998
Board of Directors, Reading Jewish Community Center Foundation, 1982-present
Board of Trustees, Reading Rehabilitation Hospital, 1992-98
Chairman, Planned Giving Committee, Reading Rehabilitation Hospital, 1992-98
Member, Government Affairs Committee, Berks County Chamber of Commerce
Member, Tax Committee, Berks County Chamber of Commerce
Member, Exeter Township School Board, 1999
Member, Exeter Township Nonuniformed Employees Pension Board, 1996-1999
Assistant Coach Berks Youth Soccer, 1999
Assistant Coach Berks Youth Basketball, 1999

David Mann

Volunteer Mathematics Tutor, RACC GED II Program, 5 years to Present
Volunteer Tax Preparer for AARP VITA Program, 2 years to Present

Barbara Mann

President, Junior League of Reading, 1981-82
Board of Directors, Red Cross (Berks County), 1970's
Church Council, Advent Lutheran Church, 1994-96 and 1999 – Present

Catherine Z. Morrow

Past President, Berks County Med. Soc. Alliance
Past President Woman's Club of Shillington and various committees
Past Vice President, Staff Wives Auxiliary to the Reading Hospital
Treasurer, Jr. Woman's Club of Shillington
Past President – PTA
Past Director of Grace Lutheran Church Bible School
Past President – Choir of Grace Lutheran Church
Superintendent – Jr. High Dept. Grace Church
Musical Programs for Senior Citizens, Church Groups and Civic Organizations (25 years)
Past Assistant Organist Grace Church
Past Chairman Music Committee for 100th Anniversary Grace Church
Meals on Wheels – 30 years
Collected for Heart, Cancer, MS, etc.

Robert H. Clymer

Vice Chairman, Park Commission, Wyomissing

Jose Rivera

Vice President, Latino Leadership Alliance Buck County, 1996-Present
Deacon, Buxmont Baptist Church, Hatboro, PA, 1996-Present
Treasurer, Philadelphia Hispanic Chamber, 1995-Present
Vice President, Philadelphia Hispanic Chamber, 1996-1998

Ralph H. Tietbohl

Original Organizer and Advisor to Berks County Association of Medical Assistants for Physicians, 7 years
School Physician, Wilson High School, 15 years
Organizer of Group of Faculty M.D.s. to form group of faculty doctors known as "Choice" to provide coverage for weekends and holidays to cover emergencies in our area, 1970-1998

Roger N. Longenecker

Board of Directors, CONCERN (volunteer professional services for children/families), Fleetwood, PA since 1980

Micheal L. Parker

Reading Chamber of Commerce, 1990-96

Irvin Cohen

Reading City Planning Commission, 1974-77
President, Reading Jewish Community Center, 1980-84
President, Jewish Community Foundation, 1985-Present
Treasurer, Berks County Penn State Campus, 1970-75
Penn State Auxiliary Board, Present
Board of Directors, Manufacturers Ass'n, Present
Board of Directors, Reading Public Museum, Present
Board of Directors, Reading Jewish Community Center, Present
Board of Directors, Jewish Federation, Present
Underwriter, Police Athletic League of Greater Reading performing arts center, Present

Frank D. McCracken

Member of Berks County chapter of the NAACP from prior to 1989 – Present
Member of Board of Trustees of Kutztown University, Kutztown, Pennsylvania (within the predicted coverage area of WTVE) from 1989-1995
Pastor of St. James Chapel, COGIC (Churches of God in Christ) a predominantly Black congregation, Reading, Pennsylvania, from 1985 – Present
Elected City Councilman in Reading 1992-1996. As Councilman, also served as appointed director of public safety from 1992-1996
Finance Board of Commonwealth jurisdiction, COGIC, from 1989 – Present
Member and President of the Victor Lodge No. 73, F.A.A.M. (masonic lodge) in Reading 1992 – Present
Advisory Board to Pennsylvania State University, Berks Campus, Reading, 1989-1992
Executive Director of Reading Police Athletic League from prior to 1989 until 1993
Reading Chamber of Commerce 1989 – Present
Reading Ministerium, organization of Reading-area clergymen, 1989 – Present